

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH
MUMBAI**

BEFORE SHRI R.C.SHARMA, AM & SHRI VIKAS AWASTHY, JM

**ITA No. 4156/Mum/2017
(Assessment Year: 2010-11)**

D.C.I.T., Circle-2, Kalyan.	Vs.	Shri Ramesh Narayan Patil, Prop. Of M/s R.N. Paints & Engineering Works, 305, Satya Society, Near Bhatiya Hospital, Ulhanagar-421003.
PAN/GIR No.ABPPP 1885 J		
(Appellant)	..	(Respondent)

Revenue by	Shri Kumar Padmapani Bora (Sr.DR)
Revenue by	Shri Navin Mishra
Date of Hearing	02/12/2019
Date of Pronouncement	09/12/2019

आदेश / O R D E R

PER: R.C. SHARMA, A.M.

This is the appeal filed by the revenue against the order of the Id. CIT(A)-3, Thane dated 15/03/2017 for the A.Y. 2010-11 in the matter of order passed U/s 144 of the Income Tax Act, 1961 (in short, the Act).

2. The only grievance of the revenue relates to deleting the addition made on account of non genuine creditors.

3. At the outset, it has been contended by the Id AR of the assessee that the tax effect in the appeal filed by the revenue is less than Rs. 50.00 lacs, therefore, in terms of CBDT Circular No. 17 of

2019 dated 08.08.2019, the appeal of the revenue deserves to be dismissed.

4. With regard to merit of the addition so deleted by the Id. CIT(A), the Id AR relied on the findings recorded by the Id. CIT(A) at para 3.1. of the appellate order and the remand report so sent by the A.O.

5. On the other hand, the it was argued by the Id. Sr.DR that inspite of giving so many opportunities, the assessee did not furnish required details before the A.O., therefore, the A.O. has correctly added the amount of creditors payable as on 31/03/2010 in respect of outstanding expenses debited to the P&L account.

6. We have considered the rival submissions and carefully gone through the orders of the authorities below and found from the record that in the assessment order framed U/s 144 of the Act, the A.O. has made addition on account of sundry creditors payable as on 31/03/2010. By the impugned order, the Id. CIT(A) has deleted the addition after calling a remand report and giving a detailed finding at page Nos. 23 to 26 of his appellate order. The precise observation of the Id. CIT(A) was as under:

“During the course of appellate proceedings we had submitted necessary evidences in respect of these five creditors to prove that all

these creditors are genuine. Appellant has purchased goods from these parties which the Ld. AO has accepted as genuine, against the purchase payment has been made to these parties which also has been accepted as genuine but treated the outstanding balances of these parties as ingenuine without bringing on record any evidence. Since the purchases and payment has been accepted as genuine the balance which is out of the accepted amount cannot or should not have been doubted as ingenuine. The Ld. AO treated these credit balances as ingenuine for the want of verification as the notices sent to these"creditors remain unserved. Here it is pertinent to mention that due to change of address or some other reason the same remain unserved. During the course of appellate proceedings we provided name and address and also the bills, confirmations payments proof as additional evidence in support of our contention. Your honour sent these evidences to Ld AO for verification by calling remand. In the remand proceedings the Ld AO issued notice u/s 133(6) and called all these creditors to prove genuineness of outstanding demand. After verification he found them to be genuine. The said fact has been accepted by the Ld. AO in para 5 of the remand report. In view of the verification and consequent genuineness of outstanding balance the unwarranted addition on a/c/ of unexplained creditors needs to be deleted forthwith.

7. From the record we found that the assessee was engaged in the business of Scaffold Contractor as a proprietor under the name of M/s R.N. Paints and Engineering Works. During the course of scrutiny assessment, the A.O. made addition by disallowing the creditors of Rs.1,05,31,163/- in respect of five parties on the plea that the notices issued to these parties were returned back by the postal authority with the remark "non known/incomplete address/unclaimed". Before

the Id. CIT(A), the assessee submitted additional evidence under Rule 46A of the Income Tax Rules, 1962, which were sent by the Id. CIT(A) to the A.O. for his remand report. In the remand report, the A.O. stated that the transactions as appearing in the confirmation matches with the transaction appearing in confirmation submitted by the assessee. Lastly he stated that the closing balance as on 31/3/2010 of all the sundry creditors tallies with the credit balance as mentioned in the assessment order against each of 5 sundry creditors. In second remand report the A.O. stated that notices were sent to the parties. The notices sent to the parties have been served. Since the parties had already submitted all the details they did not resend them again. Hence no adverse inference of the remand report should be taken particularly when all the evidences are in the A.O.'s record.

8. The A.O. further observed in the remand report as under:

"In view of the aforesaid evidences you honour will find that appellant duly purchases the relevant materials, used it for business purposes and made the payment against goods purchased".

By considering the remand report, the Id. CIT(A) deleted the addition after observing at page 11 of his appellate order. As per the report, the creditors were found to be genuine. Since the Id. CIT(A) has deleted the addition after considering the remand report, we do not find any reason to interfere in the order of the Id. CIT(A) for deleting

the said addition. Moreover the tax effect in respect of the relief given by the Id. CIT(A) is much less than the prescribed limit of CBDT Circular No. 17 of 2019 dated 08.08.2019. The case is also not covered by any exception to this circular. Accordingly, the appeal of the revenue is dismissed.

9. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 09th December, 2019.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 09/12/2019

*Ranjan

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai